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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 KENNETH KING, *et al.*,

4 Plaintiffs, New York, N.Y.

5 v. 14 Civ. 7694 (JFK) (JLC)

6 ANDREW WANG, *et al.*,

7 Defendants.

8 -----x
9 January 18, 2019
10:30 a.m.

10 Before:

11 HON. JAMES L. COTT,

12 Magistrate Judge

14 APPEARANCES
15

16 SAM P. ISRAEL, P.C.
17 Attorneys for Plaintiffs
BY: SAM P. ISRAEL
TIMOTHY SAVITSKY

18 KASOWITZ, BENSON, TORRES, LLP (NYC)
19 Attorneys for Defendants
BY: KIM CONROY
TIMOTHY B. KELLY

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1 (Case called)

2 MR. ISRAEL: Sam Israel and Tim Savitsky for plaintiff
3 Yien-Koo Wang King on behalf of the Estate of C.C. Wang.

4 THE COURT: Good morning, gentlemen.

5 MR. KELLY: Good morning, your Honor. Tom Kelly and
6 Kim Conroy for Kasowitz, Benson, Torres on behalf of Andrew
7 Wang and S.K. Wang.

8 THE COURT: Good morning. You may be seated.

9 So, I think we have a full agenda this morning. You
10 will have to steer me through a little bit but first thing I
11 wanted to raise is the protective order. I didn't, after I
12 issued my order I didn't get anything further from the parties
13 so do you all wish to be heard further about that at this
14 point? Primarily the defendants, I guess I should say, in the
15 sense that I think I indicated that I was not inclined to have
16 attorneys eyes only effectively be the default unless you could
17 make some particularized showing to convince me why that was
18 necessary and then there was nothing further submitted.19 So, are you abandoning that or do you want to make a
20 further argument on that point?21 MR. KELLY: Your Honor, we didn't intend for it ever
22 to be the default. We wanted it for a narrow set of --23 THE COURT: I don't think it reads very narrowly. I
24 think that is Mr. Israel's problem with the language proposed.

25 Is that correct?

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1 MR. ISRAEL: That's correct, your Honor.

2 THE COURT: So, I am pulling it up now.

3 I guess what Mr. Israel did is he added what I will
4 call limiting principles to the language so what he added is:
5 *Either party to this action, prior to the production by it of*
6 *any document it believes to contain confidential information,*
7 *including, without limitation, an individual sensitive personal*
8 *financial information.*

9 Do you have a problem with that? You may want to look
10 at this. That's his addition: *Shall have the right to mark*
11 *such document with a label "confidential."* *Both the first page*
12 *and all subsequent pages of the document shall be so marked.*
13 *Either party to this action shall also have the right to mark a*
14 *document as confidential attorneys eyes only that it believes*
15 *to be highly sensitive and proprietary because such materials*
16 *contain proprietary data which might cause competitive injury*
17 *if disclosed to the opposing party directly.*

18 That last phrase was also something Mr. Israel added.

19 MR. KELLY: So, the disagreement is to whether the
20 sensitive personal information can be deemed attorneys eyes
21 only or only confidential.

22 THE COURT: Right. I understand that.

23 MR. KELLY: Right.

24 THE COURT: My view is, given the nature of this
25 case --

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1 MR. KELLY: Right.

2 THE COURT: -- it may well be, as I think your letter
3 suggested, that in the typical case financial information of
4 this kind would be attorneys eyes only but I don't see how, on
5 the surface anyway, that can be the default in this case given
6 the nature of the dispute, and my order requested that you
7 particularize the basis for requiring sensitive financial
8 information to be attorneys eyes only because otherwise,
9 Mr. Israel and Mr. Savitsky will get documents produced and
10 they're going to want to talk to their clients and say, *Are you*
11 *familiar with this account at this bank or whatever?* and by
12 your scenario they're not allowed to have those conversations.

13 MR. KELLY: I think, your Honor, last time we were
14 here we discussed treatment of attorneys eyes only for a
15 specific small piece of sensitive personal information which
16 was Mr. Wang's address in Shanghai and --

17 THE COURT: That was a very discrete, specific thing.

18 MR. KELLY: Right.

19 THE COURT: And they agreed to that.

20 MR. KELLY: Right. I didn't mean to be suggesting all
21 financial information falls into this category or that, but if
22 we need to do it on a case by case basis that's fine with us
23 too.

24 THE COURT: Well, but that's the thing. If you do it
25 on a case-by-case basis you are going to have meet and confers

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1 and conferences with me on a daily basis and we can't have
2 that. I certainly don't have the time for that and, frankly,
3 you all, I assume, have other cases besides this one and you
4 can't -- it is just unmanageable. You have to have general
5 principles here.

6 MR. KELLY: Right.

7 THE COURT: The nature of this dispute, this is a
8 family dispute.

9 MR. KELLY: Right.

10 THE COURT: So, this is not a case of parties who are
11 arm's length from each other, these are relatives. Right? So,
12 that's what makes this, I would say, more complicated in some
13 ways, but also why the general principles shouldn't apply,
14 absent some showing. You all, the last time around, raised
15 concerns about that address and Mr. Israel was willing to
16 accommodate that. If there are some, I will call them
17 financial documents that you have some concern about producing
18 to Mr. Israel that you, for some reason, think he shouldn't be
19 able to talk to his clients about, I suppose you could say that
20 but I don't think the protective order's language should have a
21 default that it is produced definitively as attorney's eyes
22 only.

23 I guess that's where I come out.

24 MR. KELLY: Okay.

25 So, our issue with the language that was there was

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1 that it effectively has no application in the case, this sort
2 of trade-secrets-type information. This isn't a trade secrets
3 case but we have no intention of bogging the Court down or
4 plaintiffs with, you know, excessive use of an attorneys eyes
5 only designation.

6 So, you know, I think Mr. Israel's proposal should be
7 fine as long as we have an opportunity to, you know, in some
8 instance if there is some piece of information that falls out
9 of his category to either ask the Court or ask opposing
10 counsel. We have no intention of blanket designating anything
11 attorneys eyes only or going down that kind of path.

12 THE COURT: Okay. Let me be clear that in my sense of
13 the case from what I know, you are going to be producing some
14 information with respect to bank accounts and the like.

15 MR. KELLY: Right.

16 THE COURT: I believe Mr. Israel and Mr. Savitsky
17 should be able to talk to their clients, just as you should be
18 able to talk to your clients about whatever financial
19 information is produced. And so, that's the default, if you
20 will. And I think the language in paragraph 1, as amended by
21 Mr. Israel, is what I am going to approve. And then if you
22 have an issue because there is something that you somehow think
23 should fall outside of it, like the address issue, for
24 example --

25 MR. KELLY: Right.

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1 THE COURT: -- you will talk to Mr. Israel about it,
2 hopefully you will work it out. He may say I will agree to
3 that in the short-term but I may need to talk to my client
4 about it in the long term, in which case you will put a pin in
5 it and come back to it or whatever. I don't want you to get
6 bogged down. There is too much to get bogged down in with this
7 case.

8 I will sign the protective order with paragraph 1 as
9 amended by Mr. Israel but, as I indicated in my order, I am
10 amenable to the mechanism of whatever does fall into the
11 attorneys eyes only category you working out what gets produced
12 to experts and the like in the mechanism you all proposed. So,
13 that means that I am going to modify paragraph 5 consistent
14 with your change.

15 So, I will make it an order rather than a stipulation
16 and order since you didn't exactly stipulate to everything. So
17 you win one and you win one. Okay? So, that's where we are on
18 that and I will file that today.

19 MR. KELLY: Great.

20 THE COURT: Okay.

21 MR. ISRAEL: Thank you, your Honor.

22 THE COURT: One down and 94 to go.

23 So, that is the first order of business. The second
24 order of business is the plaintiff's response to the
25 interrogatories and document requests that were raised

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1 initially in the letters on January 8th and January 9th. So,
2 where do we stand with that?

3 Ms. Conroy?

4 MS. CONROY: If I may? Thank you.

5 First, thank you, your Honor. I newly joined --

6 THE COURT: Welcome to our experience here.

7 MS. CONROY: Thank you.

8 We engaged in our meet and confer, as required, and
9 while we made some minimal progress I think there are still a
10 lot of outstanding issues that the parties were unable to reach
11 resolution on with regards to documents that plaintiffs were
12 willing to produce.

13 THE COURT: Well, let's take things one at a time.

14 First of all, Mr. Israel, have you provided
15 interrogatory responses?

16 MR. ISRAEL: We have not, your Honor, and I apologize
17 but my client is coming back on the 26th of this month. We
18 have only learned that definitively yesterday. They're in
19 China. And, as remarkable as it may sound in today's world
20 with telecommunications being such as they are, we have had a
21 very, very difficult time in reaching them where they are
22 specifically in China.

23 THE COURT: They don't have e-mail?

24 MR. ISRAEL: We have tried e-mail and I don't know if
25 they censor it or what they do but we aren't able to get

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1 attachments through to China. So, we were able to get
2 attachments through our interrogatories. It hasn't been for
3 want of trying, I assure you. We have been trying very hard.
4 We don't want to have to stand here and defend our position.

5 They're coming back on the 26th and we told them that
6 the minute they come back we have to sit down and get through
7 these interrogatories and finish them but we are not a -- we
8 are not doing this to delay or for any other reason other than
9 it has just been impossible, really, to get the data that we
10 need from them.

11 THE COURT: Can you have the responses in by the 31st?

12 MR. ISRAEL: Yes.

13 THE COURT: All right. January 31st is the deadline
14 for your interrogatory responses and you tell your clients that
15 they'll be personally sanctioned if they haven't been able to
16 sign these interrogatories by this date because it is well in
17 excess. They're allowed to go to China, but if they're going
18 to litigate a case in an American court, they have to follow
19 the rules of American litigation practice which they know well
20 because they've litigated in lots of courts, bankruptcy court,
21 court, surrogate court, federal court. They know a lot about
22 the judicial system.

23 So, January 31st, we are not changing the date. If,
24 by the end of the business day on the 31st they don't have
25 these interrogatory responses, your client should know, and I

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1 direct you to put them on notice, that they personally, because
2 it is not your fault if you can't reach your clients, if
3 they're in China, sobeit. I'm not telling them they can't be
4 in China, but if they're in China in a way that makes it
5 impossible for you to communicate with them, it is at their
6 peril.

7 So, January 31st, answers to interrogatories. Let's
8 go back to documents -- and I am sure part of the problem with
9 at least some documents you think a lot of it is too broad, I
10 understand, but some of the issues are also they're in China so
11 we are going to have to navigate around that.

12 MR. ISRAEL: May I just have one caveat to what you
13 just said?

14 THE COURT: Yes.

15 MR. ISRAEL: As we said, I understand your direction
16 and your order that we have the responses by the 31st and we
17 will do that. If for some reason we cannot get the physical
18 signature but we have gone through everything with our client
19 and can assure our adversary and the Court that it is accurate
20 and that we will record and it will be substituted with a
21 signed copy, is that okay? In other words, we would aver --

22 THE COURT: The answer is no.

23 They're going to physically be in New York as of
24 January 26th. They live in Manhattan, your offices are in
25 Manhattan. They can come physically to your office or you can

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1 go to their apartment and you can get them to sign, as the
2 rules require under Rule 33, these interrogatories with their
3 signatures. That's not a hardship.

4 MR. ISRAEL: Okay.

5 THE COURT: Okay.

6 MR. ISRAEL: Okay, your Honor.

7 THE COURT: So, that's what they have to do.

8 MR. ISRAEL: Okay. Got it.

9 THE COURT: So, now we are square on the
10 interrogatories so I think the bulk of what we need no talk
11 about today are documents and where the disagreements are. And
12 I know there are various categories but I have to let you all
13 lead me through where you are. So, Ms. Conroy, back to where
14 you started.

15 MS. CONROY: Sure. Thank you, your Honor.

16 Obviously you have seen the letters and attachments,
17 they are quite voluminous. So, in effort to try to make this
18 more manageable, so to speak, we went back, like I said we had
19 a meet and confer, and for the most part were not able to agree
20 on the majority of the documents that we sought or reach
21 agreement on narrowing of any, some kind of middle way.

22 So, with that being said, there is really four
23 buckets, so to speak, of documents that we sought that
24 plaintiffs are taking the position for one reason or another
25 that they're unwilling to provide. I think going to the first

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1 one is the easiest one which is documents that are specifically
2 referenced in the amended complaint. We have a number of
3 requests --

4 THE COURT: Documents that were referenced in the
5 plaintiff's amended complaint in the 2014 action?

6 MS. CONROY: Correct, your Honor.

7 THE COURT: Documents that they reference in their
8 complaint that they haven't produced to you?

9 MS. CONROY: No; correct, your Honor.

10 There are a number of allegations or documents in one
11 case, it is a videotape, in one case it is a telephone call so
12 I should qualify that.

13 We have a number of requests that we specifically are
14 asking, for instance, provide the documents and communications
15 relied on in paragraph -- I am taking it off the top of my
16 head, paragraph 35 supporting your allegation that upon
17 information and belief A, B, C. We have a number of requests
18 like that.

19 THE COURT: Okay.

20 MS. CONROY: That's, to me, the easiest kind of
21 bucket. Similarly, documents relied on in making your
22 allegations in putting together your amended complaint.
23 That's --

24 THE COURT: Well, the second thing you said is broad.
25 The first thing you said is narrow. In other words, if the

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1 request is essentially whatever underlying documents are that
2 support the allegations in paragraph 35, produce them.

3 That's what you are saying?

4 MS. CONROY: Correct.

5 THE COURT: So, let's stop right there.

6 MS. CONROY: Sure.

7 Mr. Israel or Mr. Savitsky, who wants to respond to
8 that?

9 MR. ISRAEL: If it is just -- like you just said, your
10 Honor, there is a nuance here and to say that -- I'm not sure
11 the exact language they used but we have been very careful in
12 going through their requests and when they ask for things that
13 are presented in a way which effectively is what informs your
14 making this allegation, as I am sure your Honor can appreciate,
15 that's going into our thinking as to why we would be making
16 this allegation. It is different if you are asking for a
17 category of documents from which one can reach whatever
18 conclusion one reaches. The latter category I have no problem
19 with. Makes sense. If they're doing it that way it is limited
20 to a subject. When they're trying to get into our heads and
21 say give us what you were thinking to create this thing, that's
22 where the problem is.

23 THE COURT: I appreciate the distinction you are
24 making and you are talking about your work product, but my
25 understanding of what is being sought here is not your work

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1 product but are any documents that underlie allegations in your
2 amended complaint which they are entitled to.

3 MR. ISRAEL: I think what we need to do, your Honor
4 and I don't mean to burden the Court more than it is already
5 burdened, but I think we have to see the actual request
6 because, to my mind, we agreed to produce documents that fall
7 within that category that we just were talking about and not
8 documents that get into our thinking on what goes behind some
9 of our allegations.

10 THE COURT: I'm not sure I was actually given the full
11 document request and the objections in this round of letters.
12 I am not sure I have those.

13 MS. CONROY: I thought they were -- we actually
14 attached the responses and objections to our --

15 THE COURT: Did you?

16 MS. CONROY: -- to our letter. You should have
17 received that by hand. I apologize if that wasn't included in
18 the exhibit.

19 THE COURT: I didn't print them out.

20 MS. CONROY: It certainly wasn't online because it was
21 over the limit.

22 THE COURT: Can you read me an example?

23 MS. CONROY: Sure, your Honor.

24 Our request number 2 is documents and communications
25 referenced in the amended complaint.

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1 THE COURT: Say that again.

2 MS. CONROY: Documents and communications referenced
3 in the amended complaint.

4 THE COURT: Documents and communications. So,
5 documents in the amended complaint, that's a very concrete and
6 finite thing. There are eight documents that are mentioned in
7 a 67-page complaint and you don't have them they should produce
8 them. Communications is a little trickier. What do you mean
9 exactly by communications?

10 MS. CONROY: Sure. I can give an example.

11 They, throughout their complaint which is quite
12 lengthy at times, they reference communications that occur
13 between certain parties to support their allegations. For
14 instance, I believe they reference a February 2013 conversation
15 between, purportedly, our client and their client that was
16 recorded and they didn't specifically say that. They reference
17 other communications purportedly between, alleging our clients
18 had with the PA, alleging that our clients had with some of the
19 straw men. So, to the extent that they have documentation to
20 that effect that they're referencing in their complaint, I
21 think we are owed that.

22 THE COURT: I think what has happened in the 21st
23 Century with respect to discovery in federal cases is the
24 following: It has become unnecessarily complicated.

25 Back in the day when I was a young litigator, I would

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1 get served a document request and I would pick up the phone and
2 I would call my adversary and I would say, *Tell me what you*
3 *really want.* And the adversary would say, *I want A, B, C, D*
4 *and E.* And I would say, *A, B, and C, no problem. D I don't*
5 *have, and E I have a problem.* And then we would go from there.
6 I think here, I mean I think you have 83 document requests.
7 That's a lot of document requests.

8 MS. CONROY: I understand.

9 THE COURT: I really think what has to happen here is
10 what's happening right now, which is if you say to
11 Mr. Israel and Mr. Savitsky Here is what you have referenced in
12 your complaint, these 11 documents and these 14 communications
13 and we want all the documents that either reference or related
14 to those communications. They don't have a basis to object to
15 that and they have that, presumably. And, it is surprising to
16 me they haven't been produced and they should be produced.
17 And, Mr. Israel is saying to me they have been produced.

18 So, that's not a big issue. I think when you get
19 beyond that, if some of them are worded in the way Mr. Israel
20 suggested which is requests that effectively elicit counsel's
21 work product, then that is going to raise issues but that may
22 be beyond what you are really looking for.

23 Do you not have, in your possession, the documents
24 that are referred to in the amended complaint?

25 MR. KELLY: Well.

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1 MS. CONROY: Well, with all due respect, plaintiffs
2 made a production I think for the first time at 7:00 last night
3 so we hadn't gotten any documents. So, if they're in my
4 possession as of last night, I can't say one way or the other.

5 THE COURT: Were these things produced last night?

6 MR. ISRAEL: I understand they had been but to the
7 extent they haven't been, they will be produced on a rolling
8 basis the next couple of days. We had our meet and confer
9 yesterday. At the end of the meet and confer we started to
10 send them documents and will continue to do that.

11 It is not our intention to withhold those documents,
12 your Honor.

13 THE COURT: Okay. If that's going to get worked out,
14 I'm not worried about that. What's the next thing? You said
15 four buckets; is that the first bucket?

16 MS. CONROY: If I can still --

17 THE COURT: Still in the first bucket?

18 MS. CONROY: Can I still stick in the first bucket for
19 minute just to clarify?

20 THE COURT: Sure.

21 MS. CONROY: So, in an effort -- and I know you are
22 right, your Honor, what me and Mr. Kelly did was try to present
23 to the effect of what your Honor was talking about what are we
24 looking for some of these do seem broad and, if you wouldn't
25 mind, I would like to go through those to make sure that we are

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1 all on the same page as to what will or will not be produced.

2 THE COURT: That's fine.

3 MS. CONROY: Great. And I apologize for looking down,
4 I wrote them down.

5 There are, on paragraph 77 in the complaint, there is
6 an allegation that there were tens of millions of dollars worth
7 of assets referenced in the trust that is part of the
8 allegation for the predicate act that plaintiffs are alleging
9 so we were looking for, again, documents that reflect that
10 allegation, that there are in fact tens of millions of dollars
11 in the trust.

12 THE COURT: Okay. Was there an objection to that?

13 MS. CONROY: Yes, your Honor.

14 THE COURT: What is the objection?

15 MS. CONROY: There are a number of objections to it.
16 Everything I am asking for is stuff that we were told in our
17 request that wouldn't be provided. It was: Seeks documents
18 that have no relevancy. It also said the captioned action
19 concerns whether defendant Andrew Wang breached his fiduciary
20 duty to the estate by stealing and self-dealing with the
21 estate's assets.

22 THE COURT: Why don't you sit. It might be easier to
23 speak into the microphone and sit.

24 MS. CONROY: And we have a copy of the responses and
25 objections, if your Honor would like. It also says -- these

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1 are a combination of request responses because, like I said, I
2 tried to minimize them. So, these are requests that combine
3 9 and 10. It says, YK objects to the request to the extent it
4 seeks documents for the purposes of pursuing claims that are
5 barred by YK's discharge in bankruptcy and the statute of
6 limitations.

7 THE COURT: I am a little confused. The request was
8 related to allegations in a paragraph of the amended complaint.

9 MS. CONROY: Yes, your Honor.

10 THE COURT: So, Mr. Israel, why would documents
11 underlining an allegation in your pleading be irrelevant? I
12 don't understand how that can be an objection.

13 MR. ISRAEL: It is very simple.

14 What we do in the complaint is we give a history of
15 everything that preceded over the last 15 -- more than 15
16 years, something like 17, 18 years. We give a history of that
17 to put us in current context.

18 THE COURT: Going back to 1997.

19 MR. ISRAEL: Right.

20 THE COURT: Right.

21 MR. ISRAEL: So, what we do is we summarize things
22 that took place and then proceeded to trial, probate trial.
23 Some of the probate trial, most of the probate trial was
24 resolved by our winning and a finding that the will that was
25 being probated was fraudulent and a bunch of other things. But

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1 there have been other things that have been attendant to that
2 probate trial which are a 2103 proceeding which seeks to
3 recover assets that belong to the estate and a some other
4 proceedings.

5 What we put in the complaint was for context. And I
6 know the immediate reaction is, hey, you got it in your
7 complaint, it must be relevant otherwise it wouldn't be in your
8 complaint. However, when we are just giving background to
9 something you can say in a complaint right after World War II
10 we did this, this, and this, and it wouldn't make World War II
11 and any documents related to World War II probative of claims
12 at issue.

13 The fact of the matter is, this case doesn't invite a
14 relitigation of the probate trial.

15 THE COURT: Well, it actually does a little bit, I
16 think, unfortunately and I know you are resistant to that and
17 you are making a motion before Judge Keenan to that effect.
18 But, the Wang complaint, the 2018 complaint incorporates, by
19 reference, a lot of what went on in the surrogate's trial as a
20 predicate for the RICO claim, doesn't it? Effectively, it
21 does. You have arguments that Judge Keenan will decide whether
22 it is inappropriate for them to re-spin them in a federal
23 lawsuit. I get that. But, unless and until the complaint is
24 dismissed -- and Judge Keenan was very precise in his order, he
25 stayed deposition discovery but he didn't stay document

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1 discovery -- so there is an overlap here with the surrogate's
2 court proceeding. I know are you resistant do it but I can't
3 second guess Judge Keenan, right? It is not for me to do that.

4 MR. ISRAEL: It hasn't been ruled on.

5 THE COURT: Your motion.

6 MR. ISRAEL: Right, our motion hasn't been ruled on.

7 THE COURT: I know.

8 MR. ISRAEL: And it is not to say because it hasn't
9 been ruled on that the thinking in the motion and that is
10 behind the motion is invalid. It just means it hasn't been
11 ruled on. The thinking that is in the motion applies equally
12 here which is to say that if you are looking for documents from
13 a proceeding that has already been adjudicated and upheld on
14 appeal, what you are doing is you are looking to make a
15 collateral attack on that judgment and that jury verdict --
16 just let me finish.

17 If you are looking at those things for independent
18 reason that have to do with the allegations in these
19 proceedings, in the complaint and the counterclaims -- I call
20 them counterclaims but the other complaint -- that's different.
21 But I haven't heard anything like that. Instead what I have
22 heard is they're looking to go back to that original proceeding
23 and the reason we have finality in a case, the reason we
24 respect a jury verdict is because you have your remedies. You
25 can appeal, which they did. They lost the appeal and they were

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denied a further appeal to the Court of Appeals. Do we have to continue to relive the phenomenon that went into this trial that stems back to facts that go back two decades?

THE COURT: But here is the thing: You can't effectively stay your document production in the 2018 action because you think you have a meritorious motion to dismiss because, I assume -- there is no transcript on the docket -- you aired some of the this out with Judge Keenan at the time he set the schedule for your motion and he issued the order where he stayed deposition discovery. I assume you argued for a stay of discovery entirely before him in the 2018 action because you suggested to him that it was an end run around the finality of the surrogate's court proceeding.

MR. ISRAEL: No.

THE COURT: No?

MR. ISRAEL: No, that's not what happened.

What happened was we asked for a stay pending a resolution of our claims. We did not get into all of this information. The information was addressed in our motion to dismiss but I didn't stand there and go into -- plus, we didn't begin to go into the discovery demands. Judge Keenan saw, I believe, that they're looking for things that were already litigated years ago and that led to a jury verdict. I think -- I mean I am guessing, I can't speak for the Judge, but I think that it is just wrong to try to use this as a vehicle to

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litigate those things when that's not even what their claims are about. Their claims are not about that.

THE COURT: Well, I certainly -- I can't speak for Judge Keenan and if, essentially, you are arguing that had he known what you now know because of what's been requested he might have ruled differently, I mean, you can obviously make whatever application you think is appropriate to him in that regard but a magistrate judge can't second guess the district judge's order in a case that's issued.

So, I'm not staying document discovery in the 2018 action because Judge Keenan already ruled on that point. If you want him to revisit that because now you have in hand what they're asking for and you think that it somehow would change his mind about things, then you should take whatever action you think is appropriate in that regard.

MR. ISRAEL: But there was no motion, just so we are clear. I hear what you are saying and I respect that, absolutely, but there was no motion that we made at that time. We informally, while we were sitting with the Judge said, basically, wouldn't it make sense to do this? And he said my normal practice -- not what I do every time, my normal practice -- is to not allow depositions to go forward and I allow document discovery. He did say that.

THE COURT: That's what his order said.

MR. ISRAEL: Yes. There was no formal motion and what

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1 we will do is make a motion to the Judge but for the time being
2 what I would ask you to look at, your Honor, is there is a
3 question of relevance. Is it relevant to their claims to go
4 back and look at the other things that were litigated before?
5 Is it relevant what the, for instance about what the doctor
6 said in the trial in the surrogate's court trial? Is it
7 relevant to their claim for RICO violations? How could it
8 possibly be? What a doctor said at a trial that goes back to,
9 that deals with the capacity and the mental capacity and
10 whether there was a fraud with regard to a will from X number
11 of years ago, how is that relevant to their RICO claims? Of
12 course it's not. It is just not.

13 THE COURT: Well, they are claiming fraud, right?
14 They are, in some respects -- well, I'm not going to say that.
15 Let's try and focus ourselves specifically on requests. Okay?

16 MR. ISRAEL: Okay.

17 THE COURT: I think that's what we need to do. I'm
18 not going to speak in broader terms. That's not for me to do
19 today. I adjudicate discovery disputes. So, what's the
20 current document or set of document requests that's on the
21 floor?

22 MS. CONROY: The one we were currently talking about?
23 Because there is more after that.

24 THE COURT: Yes.

25 MS. CONROY: The one we were talking about in

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1 particular that I think goes to the broader issue is, was
2 basically documents and communications that reflect the tens of
3 millions of dollars worth of assets referenced in paragraph 77
4 of their complaint.

5 THE COURT: Right. And you are saying that's a
6 contextual allegation, not a substantive allegation.

7 MR. ISRAEL: I have a different response.

8 THE COURT: Okay.

9 MS. CONROY: But can I respond to just very quickly.

10 Mr. Israel just made a whole bunch of arguments about
11 whether or not it went to our affirmative case. I can sit here
12 and argue in fact that it does but putting that aside, your
13 Honor, these are allegations in their complaint about their
14 claims against us. As defendants, I should have the right to
15 test the veracity and the strength of their allegations
16 specifically referenced in their complaint. That has nothing
17 to do with my affirmative actions, that has to do with the
18 strength of their allegations that support their actions.

19 And, going back to the surrogate court issue and we
20 touched upon this a little bit in our letter, there is a little
21 bit of a sword and shield going on here that I think, quite
22 honestly, it is unfair and needs to be flushed out.

23 There are numerous paragraphs in here about the
24 background of the will, how my clients used the mental --
25 purportedly used the mental incapacity of the decedent C.C.

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1 Wang to their advantage, to deprive the estate of it all in a
2 scheme to deprive the estate of its goods to their benefit. It
3 is literally listed -- the phony will, that's a quote, it is
4 literally listed in the predicate acts asserted against S.K.
5 Wang.

6 So, the suggestion here that this is background and
7 this doesn't go to the very heart of their claim, quite frankly,
8 we are going to have to agree to disagree. You wouldn't put in
9 almost 20 paragraphs of it, put it in your predicate acts in
10 your causes of action and sit here in good faith and say that's
11 just background.

12 THE COURT: Okay.

13 Did you want to say something else?

14 MR. ISRAEL: I was going to say something about the
15 prior point but about this, it is not like this is something
16 there that we are asserting that warrants equivocation or
17 challenge. It is a given the things that I put down. It is a
18 matter of record. There is court records that reflect that.
19 I'm not making this stuff up or suggesting. This is just
20 background.

21 THE COURT: Okay, but that means if you are relying on
22 court records for the allegations in paragraph 77 then that's
23 what you tell then and you identify which court records and
24 that's the end of that. That's easy.

25 MR. ISRAEL: Okay.

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1 THE COURT: That's really what we are talking about.

2 MR. ISRAEL: All right. We can do that.

3 THE COURT: Okay?

4 MR. ISRAEL: Yes.

5 THE COURT: You will do that?

6 MR. ISRAEL: Yes.

7 THE COURT: Okay.

8 Next?

9 MR. ISRAEL: The other thing though, to get back to
10 the prior point, the things that we are talking about in the
11 prior point about what was the millions of dollars that were in
12 the estate I think which she was talking about, are things that
13 came up also in the surrogate's court proceeding and the
14 documents that support that are identical to the documents they
15 have, meaning that Andrew Wang and S.K. Wang had. Both of us
16 received documents in that proceeding and both of us, the
17 quality and the completeness of those documents were something
18 which are questionable for both of us. We receive documents,
19 there have been five lawyers, five law firms that preceded us
20 in representing the Kings. Five law firms. To say that, you
21 know, that they want a kind of a pristine reproduction of the
22 documents we received in that proceeding and that they
23 received, seems to me, is unfair.

24 What they're talking about in this specific instance
25 that we just went through are documents that came up in that

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1 proceeding in the surrogate's court proceeding that they have
2 just as much as we have and they know and if they were to talk
3 to their colleague Akiva Cohen -- he is on their team, he has
4 appeared in this case -- he is as aware of those assertions as
5 we are and has access to the same documents we have.

6 THE COURT: We have been through this a little bit in
7 prior proceedings.

8 My understanding is both sides have a significant
9 number of documents from the surrogate's proceeding but, that
10 being said, what needs to happen in this case is in response to
11 document requests you should say, if it's appropriate, the
12 documents that we would otherwise produce responsive to
13 document request number blank are Bates stamps number 100
14 through 123 from the surrogate's court proceeding. And then
15 they would know that's what you are relying on.

16 That's how this should work.

17 MR. ISRAEL: I'm not sure that --

18 THE COURT: You don't have to physically produce it
19 again but you need to make sure they understand that this is
20 what you mean and what you are relying on. That's what needs
21 to happen in both directions; not just from you but from them
22 to you as well.

23 Why isn't that the right way to think about it?

24 MR. ISRAEL: It makes eminently good sense.

25 The two problems that I have with that -- it makes

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1 sense but not only the documents that I think that we have were
2 Bates stamped, I think we received naked documents -- naked I
3 mean they don't have numbers indicating their source -- but we
4 do know that they came from people in the surrogate's court.
5 That's number one; and number two, we don't have the documents
6 necessarily the ones that are Bates stamped, sequentially.
7 They may have been taken out in lumps and used in this case or
8 for this particular motion and not maintained in a pristine
9 numbers 1 through 30.

10 THE COURT: I'm not going to micro-manage how you
11 manage your documents.

12 MR. ISRAEL: I'm not asking you that.

13 THE COURT: If it were me, I would probably start over
14 and take the treasure trove of surrogate's court documents and
15 mark them S-1 through S-1 million and agree with the other side
16 to do that so you are all singing off the same sheet of music.
17 That's what I would do. But I don't know what your resources
18 or inclinations are.

19 MR. ISRAEL: It's a lot of work, it would overwhelm
20 our practice to have to go through -- I have like a room just
21 filled with documents that we got from the surrogate's
22 proceeding. I mean I have to have somebody go in there and
23 reproduce the room.

24 MS. CONROY: Your Honor, if I may?

25 I offered, just to this point which I touch upon in

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1 our letter, this was a specific issue we talked about on our
2 meet and confer. I understand that, as has been talked about
3 in all these papers there was 15 years of litigation, there
4 were multiple counsel before us. Taking counsel at his word,
5 apparently some documents were produced with Bates stamps, some
6 were without. We asked if, at defendant's cost, we could make
7 a copy to make sure everybody was on the same level playing
8 field with regards to the documents from the surrogate's court
9 that was in play. They said that was impractical; they had it
10 organized in a way that it was their work product. We said
11 fine, is there a list that you have of the productions that
12 were made by the parties that we can go back and double check
13 to try to figure that out? That wasn't something they were
14 willing to provide either.

15 To the extent that this is impracticable for counsel,
16 like I said on the meet and confer, I am happy to talk to
17 counsel and work out paying for some independent contractor to
18 make copies and organize this stuff so no work product is
19 shown. I offered --

20 THE COURT: At your cost.

21 MS. CONROY: At our cost. We want to ensure --

22 THE COURT: In other words you would have a vendor
23 take everything in Mr. Israel's room, you would not be involved
24 in that so you wouldn't know how it was organized --

25 MS. CONROY: Correct.

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1 THE COURT: -- the vendor would take all the documents
2 and number them 1 through whatever and then give each side both
3 of them.

4 MS. CONROY: Correct.

5 THE COURT: That's great.

6 MR. ISRAEL: Yes, that might work.

7 MS. CONROY: And we asked for that because a lot their
8 objections, like you just heard, *Well, this is in the*
9 *surrogate's, this is in the surrogate's.* And not casting any
10 aspersions on prior counsel or how it was done or surrogate's
11 court -- and I will with agree with Mr. Israel on this, it is a
12 lot of documents in that court were not necessarily maintained
13 in the best, and it wasn't electronic, and trying to figure out
14 especially without Bates stamps who produced what, what was the
15 universe, has been challenging. So, that was one of the
16 things -- and we still maintain that we are willing to do that.

17 THE COURT: Mr. Israel, I don't understand why you
18 won't agree to that.

19 MR. ISRAEL: I didn't say I wouldn't agree to it. I
20 am hearing it in a refined form that we are talking about and I
21 would agree but I want to know one other issue I am concerned
22 with and I can probably figure it out, but there is work
23 product wedged in among these documents. So what I will have
24 to do is go through them -- and I guess I am going to have to
25 do that -- to weed out work product because, like I said, they

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1 weren't maintained in the exact form we --

2 THE COURT: Your firm's work product?

3 MR. ISRAEL: Yes, my firm's work product.

4 THE COURT: In terms of what? Like things you have
5 written on documents?

6 MR. ISRAEL: This document means this, this and this,
7 and a memo that is connected to the document and things like
8 that.

9 THE COURT: Okay. So you will have to purge the room
10 of your work product before it's given to the vendor.

11 MR. ISRAEL: That's right.

12 But, it seems to me that's a win-win for you and it
13 is, frankly, a win-win for the defendant, too, because then you
14 are all working from a common set of documents and that's
15 probably the core documents for the case. And let me be
16 clear -- and I am going to state something I know you know but
17 I think it is important to say it in this context -- which is
18 there cannot be a document that isn't produced during discovery
19 that is then utilized after discovery because this is not a
20 game. This, *oh, they didn't ask for this so we have got these*
21 *great documents and we are not going to give them,* this is not
22 that kind of case. And so, when you get to the point of
23 summary judgment motions and/or trial in this case, there can't
24 be some documents that sort of surface for the first time for
25 either side.

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I am directing this to both sides. There has to be a level playing field, if I can put it that way, where you are all operating from the same set of documents and then making whatever arguments you are going to make. So, that's clear to everybody.

MR. ISRAEL: Absolutely.

MS. CONROY: And for qualification, your Honor, to that point, it is funny because that brings into question certain documents related to a third-party that haven't been -- that we have requested that aren't produced to us purportedly because the selection of documents from the third-party are being asserted as work-product. I would ask if they're going to be used in some form of discovery, be it at a deposition or otherwise before the end, we be given any such documents at least 48 hours beforehand.

MR. ISRAEL: Your Honor --

THE COURT: I don't know what we are talking about and I really don't like it when lawyers start to digress into some other area when we are in one are. Now you are talking about some third-party in an amorphous way, I don't know what that's about. So, we can come back to that but I don't know what that means.

MS. CONROY: Okay.

THE COURT: I think we have agreed right now that the surrogate's court document collection that plaintiff has, once

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whatever work product is removed, you will coordinate with defense counsel to provide it to a third-party vendor and then that vendor, at defendant's expense, is going to Bates stamp all of those documents from surrogate's 1 to surrogate's whatever the last number is and then you will both have them, and then you will both be able to say we are relying on S-148 to S-162 as the documents underlying paragraph so-and-so in the amended complaint.

MR. ISRAEL: We should also have their surrogate's documents though because we don't have a complete set of what happened in the surrogate's court so lets make that reciprocal.

MS. CONROY: Okay.

THE COURT: I assume that is in everyone's interest that the collection of the surrogate's materials include whatever you have and whatever they have. I suspect a lot of it is overlapping but if it isn't then, of course, that's in everybody's interest.

MR. ISRAEL: And to be clear, when we talk about their documents, meaning the defendants, it would assume documents that Akiva Cohen has because he is counsel of record also in this matter -- not in the courtroom today -- but he is and he represents Andrew Wang and S.K. Wang. I happen to believe that he has everyone's documents. He will have both sides. So, I want to make sure that we get his documents, too, because I think that is the most comprehensive set of surrogate's court

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1 materials.

2 MS. CONROY: Your Honor, if we have documents we are
3 not going to parse them out from one attorney to the next. If
4 we have documents in our custody and control, obviously if
5 Mr. Cohen as co-counsel, we will be collecting them. I don't
6 really understand what the issue is here.

7 MR. ISRAEL: That's what the issue is.

8 MS. CONROY: I don't think we have ever not agreed to
9 this. We are happy to do so.

10 MR. ISRAEL: Okay. Good.

11 THE COURT: Okay. What's next?

12 MS. CONROY: Like I said, there is a handful of
13 documents to that, along the same lines that are referenced, so
14 I will go to the next one.

15 In paragraph 40 of the complaint, your Honor, of the
16 amended complaint I am talking about in the complaint solely at
17 this juncture, they have referenced that there was
18 specifically, they reference purportedly that Mr. C.C. Wang's
19 friend, close friend and colleague noticed Mr. C.C. Wang's
20 strange behavior and they quote him in their complaint --

21 THE COURT: They quote who? Mr. Wang?

22 MS. CONROY: Correct.

23 THE COURT: Yes.

24 MS. CONROY: So, we ask for documents concerning those
25 observations in the quote. And that's in their complaint.

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1 THE COURT: Okay.

2 What is the response?

3 MR. ISRAEL: As far as I know there are no documents.

4 He said it to somebody and it was repeated. He said
5 it to a witness who testified at the trial and we don't have
6 any documents that reflect that except for our own work
7 product.

8 THE COURT: When you say your own work product, what
9 does that mean?

10 MR. ISRAEL: Our work product would be our recapturing
11 and taking notes on what we were told during our investigation
12 into what took place prior to C.C. Wang's death.

13 MS. CONROY: Your Honor, how can they rely on work
14 product that they then put in their complaint and tell me I
15 can't have it? You can't put in allegations and then claim
16 that, oh, based on the fact I am alleging in my complaint work
17 product --

18 THE COURT: Hold on. Hold on. Let's not get in a
19 lather here. Mr. Israel is a very precise lawyer so I think he
20 is not doing what you just said.

21 MS. CONROY: Hope not.

22 THE COURT: Let's not bury the lead. The lead was I
23 don't have any documents responsive. Okay? That's what he
24 said. Because he said that the quote is something that a
25 witness testified to at the surrogate's court proceeding. So,

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1 it comes from testimony at the surrogate's court proceeding.

2 That's the answer to what underlies this allegation. It is
3 from testimony in the surrogate's court proceeding. Whatever
4 analysis or whatever other words you want to use for what was
5 said and what his thinking is doesn't inform what he alleged in
6 a complaint. What he alleged in a complaint is what someone
7 testified to. Right?

8 MS. CONROY: I misunderstood. I thought that he had
9 said that it was based on an interview that he had about the
10 comments, your Honor, so that's what I was talking about.

11 MR. ISRAEL: I need to correct myself, if you will
12 allow me to interrupt for one second.

13 THE COURT: Go right ahead.

14 MR. ISRAEL: Apparently there was an affidavit that
15 was filed 15 years ago that was available to both sides where
16 these comments were made also.

17 So, do we have a copy of the affidavit?

18 MR. SAVITSKY: I think so.

19 MR. ISRAEL: So, we will produce the affidavit, it is
20 from 15 years ago. They should have it as much as we have it
21 but to the extent that it exists, we will produce it. It was
22 also testified to at trial.

23 THE COURT: Okay. So, that's the answer to that.

24 MS. CONROY: Sure. That's fine. That's all I want.

25 THE COURT: Qualified answer. Okay, next.

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1 MS. CONROY: The next bucket goes to paragraph 59
2 through 63 of their complaint, your Honor. It describes a
3 conversation that was purportedly had, I referenced this a
4 little bit earlier, in February 2013, between purportedly
5 between -- 2003, sorry, my colleague is correcting me, that it
6 was purportedly had between my client and their clients
7 relating to the assets and relating to the allegations of theft
8 purportedly by my client. So, to the extent there are any
9 documents relating to that conversation, or recording anything
10 alike, that's what we ask for.

11 MR. ISRAEL: If they exist, we will produce them. I'm
12 not aware of any, it was a conversation. Our client knows the
13 conversation their client knows the conversation.

14 THE COURT: Okay, but you all shouldn't have to come
15 to court to have one lawyer tell me what a document request is
16 and the other side say we will produce it if we have it.

17 MR. ISRAEL: Agreed.

18 THE COURT: We don't need to have a conference in
19 court for that.

20 MR. ISRAEL: I agree. If it was brought up on the
21 phone I would have said what I'm saying now.

22 MS. CONROY: We can agree to disagree. We did talk
23 about it on the phone and what I got told is no so that's why
24 we are here.

25 THE COURT: Okay. Well, we have a transcript so you

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1 heard what Mr. Israel said, you will order the transcript, and
2 then you will rely on that.

3 MR. ISRAEL: We also produced 1,700 pages yesterday,
4 your Honor.

5 THE COURT: But if you produce something at 7:00 the
6 day before a conference there is no way counsel can come here
7 knowing what you produced to have them informed.

8 MR. ISRAEL: Fair enough.

9 THE COURT: Right?

10 MR. ISRAEL: Fair enough.

11 THE COURT: So, there is nothing that -- I think
12 having the conference today caused you to produce yesterday.
13 If we had it next week you would have produced it next week.
14 That's why we have conferences.

15 What's next?

16 MS. CONROY: In particular with regard to that
17 conversation, maybe Mr. Israel is unaware but in his complaint
18 it says that that was a taped conversation so we would like the
19 tape of that conversation.

20 MR. ISRAEL: His client made the tape.

21 THE COURT: So the answer is that's your answer then.

22 MR. ISRAEL: Yes.

23 THE COURT: But let's parse this a little bit more
24 finely. The fact that their client made the tape doesn't
25 necessarily mean that you don't have the tape. Are you saying

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1 you don't have the tape?

2 MR. ISRAEL: We don't have the tape.

3 THE COURT: Then that's the answer.

4 How can you not have the tape? I don't understand
5 that. How can you plead it without having the tape?

6 MR. ISRAEL: Because assertions have been made that
7 the tape exists and certain things were said in the tape and
8 that's what the basis for our allegation is.

9 THE COURT: But you don't have the tape.

10 MR. ISRAEL: We don't have the tape.

11 We don't have it, do we?

12 MR. SAVITSKY: We don't have it --

13 MS. CONROY: Or other counsel for plaintiffs have the
14 tape.

15 THE COURT: Who are other counsel? These are the
16 counsel. You mean prior counsel?

17 MS. CONROY: Prior counsel.

18 THE COURT: I mean, that's part of what makes this a
19 bit of a messy case because you are all like cousins fifth
20 removed. So, I can't rely necessarily on all your ancestors to
21 have given you every last document, right? And that goes both
22 ways. So, you all have to live with that and your clients have
23 to live with that. That's just a fact of life in this case.
24 We can't do anything about that.

25 MS. CONROY: That's fine.

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1 THE COURT: Okay. What is next?

2 MS. CONROY: So, just so I am clear the tape, nobody
3 has possession of it on that side.

4 THE COURT: It sounds like Mr. Israel is saying that
5 he doesn't have the tape.

6 MR. ISRAEL: I am just told now, and I apologize I have
7 to turn to him but he knows some of the things in discovery I
8 don't know.

9 THE COURT: Okay.

10 MR. ISRAEL: He tells me that it was played at a
11 deposition. The tape was actually played in a deposition so it
12 is reflected in a transcript, correct, so some lawyer has it.

13 THE COURT: But the answer to the request then is a
14 reference to the deposition where the tape was placed, that's
15 the answer and they will see if they can find that.

16 MR. ISRAEL: Fair enough. We will do that.

17 THE COURT: Next.

18 MS. CONROY: Thank you, your Honor.

19 Then there is an allegation in paragraph 63 which
20 says, based upon this, Y.K. would come to turn over 64 C.C.
21 Wang's painting to S.K. in the spring of 2003 yet, for their
22 part, S.K. and A.W. did not turn over or distribute any of the
23 25 stolen paintings until May 2005.

24 So, one of our requests was any documents concerning,
25 reflecting that their client turned over -- purported turned

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1 over these 64 paintings that they said were turned over.

2 THE COURT: Are there any such documents?

3 MR. ISRAEL: Yes, there are, and we produced them.

4 THE COURT: Yesterday?

5 MR. ISRAEL: Yesterday; and we have also produced them
6 in these very proceedings before that as attachments to
7 filings. But, yes, they were produced yesterday, and if there
8 is any doubt about it we would be happy to produce them again
9 today. It's a critical document in the case.

10 MS. CONROY: If counsel represents --

11 THE COURT: Let me suggest this, Ms. Conroy.

12 MS. CONROY: Sure.

13 THE COURT: I obviously don't expect you to have
14 reviewed the documents that were produced last night.

15 MS. CONROY: We have not.

16 THE COURT: Why don't you, in the next few days, see
17 what has been produced then have a further meet and confer.

18 MS. CONROY: Sure.

19 THE COURT: These are not trade secrets, these
20 documents; these are critical documents. If you don't find
21 them in the treasure trove you were given last night,
22 Mr. Israel, I am sure, will be happy to identify them and
23 produce them if you don't otherwise have them.

24 MR. ISRAEL: Absolutely.

25 THE COURT: Okay.

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1 MS. CONROY: Is that for just for that category or --

2 THE COURT: That's for that category because that's
3 what we are talking about.

4 MS. CONROY: I wasn't sure if it was for all the ones
5 referenced in the complaint.

6 THE COURT: I don't know that I think we can speak
7 that broadly.

8 MS. CONROY: Understood, your Honor.

9 Okay, the next ones were in paragraph 67 of their
10 complaint they say upon substantial information and belief that
11 our clients are in possession of stolen paintings so we ask for
12 any documents or communications reflecting their substantial
13 information and belief.

14 MR. ISRAEL: Yes, and we are giving them to them. If
15 we haven't given them all we are going to continue to give it
16 to them. We can't go to trial without them having those
17 documents.

18 THE COURT: I know. But, you know what? There is a
19 May fact discovery cutoff date that Judge Keenan set and now we
20 are close to February and, as is true in most cases, you are
21 going to take all the depositions in this case between April
22 1st and May 8th, probably. And what I think we going to have
23 to do in this case is set a date by which all documents have to
24 be produced and we should talk about that at the conclusion of
25 today.

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1 MS. CONROY: I agree, your Honor.

2 THE COURT: Or else things are going to dribble out
3 and you are going to keep coming back here and saying we are
4 going to do this, we are going to do that but we have to sort
5 of draw a line in the sand and say no document after this date
6 that hasn't been produced can be used.

7 That's for both sides. I don't know what the right
8 date yet is. We are going to talk about that. We will take a
9 short break in a few minutes because I will give my friend here
10 a little bit of a break, we have been going an hour already, I
11 suspect we are not close to the end. So, that is something I
12 think we should think about, but let's go another five minutes
13 or so and we will take a short break.

14 MS. CONROY: Well, we have a number. It may be, based
15 on how it has been going today just back and forth now, I am
16 happy to, if we want to adjourn and sit down with
17 Mr. Israel for the short break and go through the remaining as
18 far as our requests for the complaint then we might be able to
19 skip all of those, if he will agree to it.

20 THE COURT: That's fine. Why don't we take a short
21 recess and have you discuss what else is on your list and you
22 will hear what his response is and it may be we have given it
23 to you or we gave it to you last night or we will give it to
24 you, in which case we don't have to spend time in court going
25 through it.

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1 MS. CONROY: Right, and then we can just talk about
2 the handful that were truly contested.

3 THE COURT: And there were others issues that all
4 raised in your correspondence that you haven't raised with
5 respect to metadata and other such things.

6 MS. CONROY: We were at the request stage.

7 MR. ISRAEL: We have some too, of course.

8 THE COURT: That's fine, but we do need to finish. I
9 allocated in my mind two hours today so I would like to be done
10 by 12:30. Okay? I don't know -- we didn't plan on an all-day
11 hearing. I assume you don't want to spend the day here.

12 So, let's take about a 10-minute break or so and why
13 don't you all talk while we break to see if we can work out
14 some of the issues.

15 MS. CONROY: Sure. Sounds good.

16 MR. ISRAEL: Okay.

17 (recess)

18 THE COURT: Okay. Case settled?

19 MS. CONROY: Unfortunately no, your Honor.

20 THE COURT: Rats.

21 MS. CONROY: We did get through a majority of category
22 1 and were able to agree to that, so that's good.

23 THE COURT: Okay.

24 MS. CONROY: And I will send confirmatory e-mail to
25 counsel after this related to that so that everybody is on the

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1 same page.

2 THE COURT: So that shortens our agenda.

3 MS. CONROY: Correct.

4 THE COURT: The next category are documents that
5 relate directly to the allegations of the complaint are, per
6 se, referenced in there. We got through one category which is
7 documents concerning the ownership, possession, sale, or theft
8 alleged. Any documents concerning the defendant's purported
9 ownership sale, transfer or thefts of any of the artwork at
10 issue in the complaint. Any documents -- as I understand it,
11 the documents relating to any of the allegations concerning our
12 client's actions with regard to any of the wills or codicils as
13 evidenced derived solely from the surrogate court actions that
14 that should be, relate, and that's all going to be produced.
15 So, I think that's taken care of.

16 We asked for -- there are certain specific statements
17 in the complaint, for instance, attributed to the decedent that
18 were purportedly about our clients. For instance, there is an
19 allegation in the complaint that C.C. Wang said that our
20 clients were treating him very poorly. Any documents relating
21 to those statements we asked for and to the extent they exist
22 counsel said they would produce them. And we left off there.

23 We are seeking documents also relating to -- the core
24 of, honestly kind of the core of their allegations which is
25 that our clients took possession and transferred certain stolen

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1 artwork. We asked for any documents relating to our client's
2 purported sale, resale, ownership, transfer of the artwork in
3 question. On the flipside of that we, with regards to our
4 affirmative claims, we have asked for the same category of
5 documents, sale, resale, transfer of any documents of any of
6 the estate or artwork listed on the appellate inventory as in
7 the possession or control of Y.K. to also be produced.

8 That's where we left off.

9 THE COURT: Those strike me as core documents in the
10 case.

11 MS. CONROY: I agree.

12 THE COURT: Those strike me as core documents to the
13 extent each side has them. What's the issue?

14 MS. CONROY: That where we left off. We were told
15 they were too broad.

16 MR. ISRAEL: I am not sure what the question is right
17 now. What, specifically, are we being asked for? She listed a
18 lot --

19 THE COURT: Documents that you have in your possession
20 related to the alleged sale that her clients made of artwork
21 that have you characterized as stolen.

22 MR. ISRAEL: Okay. Yes, we produced and we are going
23 to continue to produce -- there is no -- I have to take some
24 water.

25 There is no issue about that, your Honor. There is no

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1 issue.

2 MS. CONROY: As well, the resale of the purported
3 artwork.4 MR. ISRAEL: Yes; no, there is no issue about that.
5 We have to do that to prove our case.

6 THE COURT: Exactly.

7 MS. CONROY: I agree, your Honor.

8 We have also asked for.

9 MR. ISRAEL: You are out of water.

10 THE COURT: We don't have water because the cafeteria
11 is closed because of the shut down.

12 MR. ISRAEL: Jeez.

13 THE COURT: So, we don't have water here.

14 MR. ISRAEL: Thank you very much.

15 MS. CONROY: We also asked for documents concerning
16 the sale, transfer, or resale of any artwork in the custody and
17 control of Y.K. that was on the appellate inventory.18 THE COURT: That, again, shouldn't be controversial.
19 Is it?20 MS. CONROY: I agree, your Honor. That's where we
21 left off and when we left off at that point counsel had said
22 they weren't going to agree to produce that.23 MR. ISRAEL: The way it was just said there isn't a
24 problem.

25 THE COURT: Okay.

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1 MR. ISRAEL: If there was an objection, I suspect it
2 had to do with the exact way that it was phrased. If we are
3 talking about just the way she said it now then there is no
4 problem with it.

5 THE COURT: Okay. This is why I said what I did
6 earlier which is forget what people write, get on the phone and
7 say *What do you really want?* and then you have the conversation
8 likes you just had in the jury room that you are now having in
9 front of me.

10 But, with all due respect, I don't want to have to
11 preside over a meet and confer, I want you all to have your own
12 meet and confer. I am just here to resolve disputes following
13 meet and confer. So, let's not overlitigate things that you
14 don't need to.

15 What is next?

16 MS. CONROY: I agree.

17 To the extent it had to do with the artwork I think
18 that covers a lot. I would just ask also, I guess to the
19 extent -- well, that would also include communications with the
20 PA about these assets so I think that's fine.

21 We asked for documents concerning any damages that are
22 being alleged.

23 THE COURT: Documents concerning damages. That's very
24 broad. What do you mean?

25 MS. CONROY: Well, they're alleging, I think, in one

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1 instance, \$20 million, a total of \$60 plus million for these
2 artworks, so to the extent that they're alleging that these
3 were money -- we are just asking for documents that show the
4 valuations of what they're asking for the artwork --

5 THE COURT: Appraisals and things of that sort?

6 MS. CONROY: Correct, the basis for the numbers.

7 MR. ISRAEL: It is premature.

8 THE COURT: What do you mean by premature? It is not
9 premature. This is discovery. It is not bifurcated discovery.

10 MR. ISRAEL: No, I understand that, but some of that
11 analysis hasn't been completed yet. We can't give them stuff
12 before it is done. I have people who are going to be working
13 on this giving us the exact difference in the value.

14 THE COURT: Did you not plead a specific amount in
15 your complaint?

16 MR. ISRAEL: We pled a specific amount.

17 THE COURT: So what is the basis for the amount you
18 pled? That's what they want to know and they're entitled to.

19 MR. ISRAEL: All right. I can give them what the
20 basis is for the amount that we pled. That's fine.

21 THE COURT: Great.

22 MR. ISRAEL: It has to do with the resale value of the
23 art overseas and we can do that.

24 THE COURT: Okay.

25 MR. ISRAEL: We can give them the statements from

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1 overseas.

2 THE COURT: Then that's what you will do.

3 MS. CONROY: And I will be open, if we want to do it
4 now, your Honor, or we are happy to do it and not burden the
5 Court. So, the position during the meet and confer the other
6 day was because they were going to file a motion for stay of
7 discovery pending our discovery relating to our claims that
8 they weren't -- that plaintiff was taking the position that
9 they weren't going to produce any documents.10 THE COURT: That's why I issued my text only order
11 promptly.

12 MS. CONROY: Right.

13 THE COURT: Because I wanted you to be on notice that
14 I was not in position to grant the stay for the reasons I said
15 and which we have already talked about today, in the hopes that
16 perhaps that would encourage you all to have conversations in
17 advance of today. You haven't had that.18 MS. CONROY: And I think we tried. I think it would
19 be, I think in everybody's best interest, your Honor, to not to
20 burden the Court and we can send counsel today a summary of the
21 document categories similar to what I did just now of the
22 request so that they can consider those rather than burden the
23 Court in the first instance since the parties haven't talked
24 about it given the position by plaintiffs.

25 THE COURT: I think that's the wise course. I think

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1 there may be some overlap and to the extent there isn't
2 overlap, then I think you need to meet and confer about it.

3 MS. CONROY: Sure.

4 THE COURT: And then if you don't reach agreement, you
5 can bring it back to my attention.

6 MR. ISRAEL: I think what we should do is we should
7 have, at the end of this, counsel should provide us with a list
8 of what their understanding is of what the agreements are in
9 terms of production so we can have a kind of a clarity and
10 understanding what's going to happen as opposed to leaving it
11 kind of open-ended.

12 THE COURT: Well, that's why I think Ms. Conroy has
13 been putting on the record at least what you all have agreed
14 to. What do you mean exactly?

15 MR. ISRAEL: I don't know. I am hearing a lot of
16 intangibles in between certain things, like I am hearing
17 counsel say, well, we have agreed do this, we have agreed to do
18 that already, and I am not sure we have agreed to do the things
19 that have been represented that we have agreed to do.

20 THE COURT: Then you have to stand up and tell me
21 right now what you are not agreeing to do. That's the whole
22 purpose of you going into the jury room and having a meet and
23 confer and coming out and agreeing to certain things. If she
24 recited something you are not agreeing to, tell me right now
25 what it is.

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1 MR. ISRAEL: All right. I just want to be clear on
2 one point, your Honor.

3 We have a 2103 proceeding that's going on now in the
4 surrogate's court and the things that we are doing discovery on
5 in the surrogate's court and I don't believe it is appropriate
6 for us to be reproducing everything we are doing in the
7 surrogate's court.

8 Am I mistaken about that?

9 THE COURT: I don't know how to answer that question.
10 It depends on what is being sought in this case and whether
11 what is being produced in the surrogate's court would also be
12 responsive to what is being sought here. So, I don't know how
13 to answer that question. The answer is depends, like many
14 questions in the law, right?

15 MR. ISRAEL: Right.

16 THE COURT: So, I suspect there probably are some
17 documents being produced in the 2103 proceeding that are
18 relevant to the allegations in your pleading their pleading and
19 there are probably some that are not. But I am speaking
20 broadly because I don't know anything about the 2103 proceeding
21 and I don't know with precision what we are talking about. I
22 don't think you have to assume that every document being
23 produced in the 2103 proceeding necessarily, by definition,
24 means it must be produced in this case.

25 Do you disagree, Ms. Conroy?

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1 MS. CONROY: I do not, your Honor.

2 THE COURT: So, I don't think we need to worry about
3 that. I think they've served 83 document requests which is a
4 lot of requests. We have gone through some categories of them
5 and some specific ones. We have put on the record you have
6 said many times I have no problem with it, your Honor; I have
7 no problem; if it is phrased that way or whatever. We have the
8 transcript. You get the transcript. You produced a lot of
9 documents last night, it sounds like, which they haven't
10 reviewed. If they do review them they'll perhaps realize some
11 of what you are talking about you have already given them. You
12 are now going to have this arrangement where you are going to
13 have a third-party vendor catalog, if you will, this entire
14 surrogate's court document collection so that's going to
15 advance the ball substantially as well.

16 So, I think a lot of progress, frankly, is being made.

17 MR. ISRAEL: I agree.

18 THE COURT: But, that said, there are always going to
19 be particular categories that the parties may well not agree
20 to. At the end of the day we are going to do two things. One
21 is I will set a date for a February conference because I think
22 we should do that in this case; and second, we are going to set
23 a date for when all documents must be produced so that everyone
24 knows that we can't just dribble documents out in perpetuity
25 without any end date because I think we need that in this case.

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1 MS. CONROY: Your Honor, to the point --

2 THE COURT: Hold on. You are both talking at the same
3 time.

4 MS. CONROY: Sure.

5 THE COURT: Go ahead.

6 MR. ISRAEL: All right.

7 At the beginning of this case there was a motion to
8 dismiss that was partially based on the probate exception
9 because certain things that go to what the estate has right
10 now, what the corpus of the estate is is a probate function and
11 isn't covered and is limited to the things that the probate
12 court does such as what the assets are within the estate. This
13 was ruled on by the judge originally in a motion to dismiss.
14 So the concern that I have is by going through now an analysis
15 of what is in the estate, we are actually usurping what is
16 going on in the probate's court and we risk inconsistent
17 results. That's specifically what the probate exception refers
18 to.

19 THE COURT: But you have filed a lawsuit in federal
20 court.

21 MR. ISRAEL: Right.

22 THE COURT: You have an *ad damnum* clause where you are
23 seeking damages for a certain amount of money.

24 MR. ISRAEL: Right.

25 THE COURT: You want a judgment in this court for a

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1 certain amount of money, correct?

2 MR. ISRAEL: Yes, sir.

3 THE COURT: So, as a result of that, the defendants
4 have the right to understand why the amount that you are
5 seeking, what the basis for that is and that is not within the
6 probate exception, that is within the heartland of what all
7 lawsuits, ultimately, are about. People have to establish
8 liability and, if they do, then they get damages of a certain
9 amount and we litigate both of those together and get through
10 discovery. And so the value of the inventory, if you will, may
11 well be germane to calculating what the basis for the judgment
12 you ultimately want to recover in this case is and we have to
13 deal with that accordingly.

14 MR. ISRAEL: Your Honor, I wasn't talking about that.
15 I was talking about the things that the Judge specifically
16 excepted from our complaint, said that they don't belong in
17 this in this action because they're subject to the proceedings
18 in the surrogate's court.

19 THE COURT: Give me an example.

20 MR. ISRAEL: Unfortunately I knew you were going to
21 ask that but I don't have the motion, the decision.

22 THE COURT: Why are you saying this to me? What is it
23 that you want me to do in response?

24 MR. ISRAEL: I guess there is nothing. I guess there
25 really is nothing I am asking to you do in response and I am

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beginning to wonder why I raised it myself, your Honor.

THE COURT: Okay.

MR. ISRAEL: I am not exactly sure. I know, though, that some of the things in broad strokes that are being covered trespass upon the ruling in that original motion to dismiss and which, by the way, was confirmed by the Second Circuit in terms of this limitation that we can't get into probate issues. And I don't have it with me but I am concerned that some of the things we are covering right now might run a foul of that limitation. That's all.

THE COURT: Well, let that inform the case as you go forward. I frankly think both with respect to your pleading and the defendant's pleading that there is quite a fine line between what these cases are about and what the surrogate's case is about. It is not like there is a vast distance between the two, they're very close in scope and substance, frankly, so it is very hard, as a Judge, to try and navigate through the mine fields of discovery but if they're particular -- when you go back and reflect on this further, if you think rulings from the District Court and the Second Circuit have somehow narrowed the scope in a way that certain documents for both sides should just be left to the side, talk to defense counsel about that.

MR. ISRAEL: Okay. I will, your Honor.

THE COURT: All right. What's next?

MS. CONROY: So, I think we got through the majority

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1 but just for clarification so that I don't want to address
2 Mr. Israel's concern about stuff we spoke to I will put on the
3 record my understanding of what was agreed to.

4 THE COURT: I thought you had already done that.

5 MS. CONROY: No, I hadn't done all of it.

6 THE COURT: All right. Go right ahead.

7 MS. CONROY: Sure. Not a problem.

8 So, with regards to documents that were specifically
9 referenced in the complaint, as I understand it, counsel has
10 agreed, to the extent not already produced, to produce
11 documents concerning the Mai-Yan landscape and the allegations
12 86 to 106 including the 2011 interview and how their client
13 learned of it, when, how. And, again, counsel represented with
14 some of these categories that some of it might have already
15 been produced so I leave that as a caveat.

16 Counsel agreed to produce documents concerning any
17 appraisal or valuation of the artwork referenced in the
18 complaint.

19 Counsel agreed to produce any documents concerning
20 their client's knowledge, to the extent she has any, of Billy
21 Way or knowledge of Billy Way. Billy Way is referenced
22 throughout the complaint in multiple paragraphs as the place
23 where all the artwork purportedly sold through the straw men,
24 were shipped in China, your Honor, just for context.

25 Plaintiffs also agreed to produce documents concerning

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1 the galleries, museum exhibitions, and auction houses that are
2 reflected throughout the complaint. You may recall, your
3 Honor, again in connection with the strawman sales, a lot of
4 their allegations are that their client learned, for the very
5 first time in 2013, about these various auction house sales,
6 resales, or exhibitions in certain galleries in China either
7 directly on behalf of A.W. Wang or S.K. Wang. So, any
8 documents relating to those allegations and how their client
9 first learned about it, which is directly referenced in the
10 complaint, as being in 2013.

11 And then, any documents concerning, again, any of this
12 relates kind of to our client's knowledge or possession or
13 opening of anything in the C.Y. art safe or taking of the
14 paintings from the decedent's house. Those are direct
15 allegations in the complaint so, again, we asked for those and,
16 as I understand it, counsel is willing to produce all of those
17 documents to the extent they haven't already been produced and
18 there is no objection to that.

19 THE COURT: All right. Before you go further --

20 MS. CONROY: Sure.

21 THE COURT: Mr. Israel?

22 MR. ISRAEL: That's fine.

23 THE COURT: Okay.

24 MR. ISRAEL: I agree with that.

25 THE COURT: That's fine.

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1 MS. CONROY: Sorry. Just one more.

2 Any documents concerning the wiring of funds in
3 connection with the strawman sales. That's directly referenced
4 in their predicate act and throughout their complaint, your
5 Honor; that the funds purportedly came from our client so we
6 asked for documents concerning that.

7 MR. ISRAEL: Sure. Fair game. They got it.

8 THE COURT: Okay.

9 MS. CONROY: I think that goes to the crux of the
10 categories and, like I said, we will send an e-mail and
11 promptly deal with the documents on the meet and confer in our
12 affirmative action.

13 Going to, your Honor mentioned earlier, the metadata.
14 So, as I understand it, and I apologize if I got this wrong
15 since I am newer to this case, but I understand that your
16 Honor, for whatever reason, Rule 26 disclosures haven't been
17 exchanged in this case.

18 THE COURT: Is that right?

19 MR. ISRAEL: Yes.

20 MS. CONROY: It is really weird, your Honor.

21 MR. ISRAEL: You know what it is? It is because we
22 immediately jumped at the motion to dismiss. We had motion to
23 dismiss after motion to dismiss after appeal to the Second
24 Circuit after motion to reargument.

25 THE COURT: Right.

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1 MR. ISRAEL: But, we made the same observation so we
2 should set up a time to do that.

3 THE COURT: You both should do that.

4 MS. CONROY: I agree, your Honor.

5 THE COURT: How quickly can you do it?

6 MR. KELLY: The 31st, when his clients are back from
7 China. Does that make sense?

8 MR. ISRAEL: That's fine.

9 MS. CONROY: That's fine.

10 THE COURT: Rule 26 due January 31.

11 MS. CONROY: Perfect.

12 It is very funny because, based on my experience, a
13 lot of times with the Rule 26, it leads into this discussion,
14 is a natural progression that goes into an ESI --
15 electronically stored information -- discussion that really
16 hasn't happened yet.

17 THE COURT: Is it premature for me to be --

18 MS. CONROY: I don't think so.

19 THE COURT: No.

20 MS. CONROY: As I understand it -- and I will happily
21 given counsel a chance to talk about this. As I understand it,
22 documents have been -- certain documents have been produced but
23 the parties haven't agreed on search terms, we haven't agreed
24 on custodians. I know that we have gone through this exercise
25 of producing stuff from e-mail.

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1 THE COURT: You have?

2 MS. CONROY: We have.

3 THE COURT: Have you made any production yet?

4 MS. CONROY: Yes, we have, your Honor.

5 THE COURT: Okay.

6 MS. CONROY: My understanding is that has not been
7 done on the plaintiff's side yet. And so there is
8 objections -- there were flat out objections to metadata and
9 ESI which I thought were vastly premature given that searches
10 hadn't even been run, search terms agreed to or even proposed,
11 the volume wasn't known. Usually if there is a blatant
12 objection to ESI --

13 THE COURT: So we are not here to argue about
14 custodians or search terms, we are here to argue about the
15 broader subject.

16 MS. CONROY: I think that that needs to be in place.
17 Because when I brought this up on our meet and confer I just
18 got shut down and said, no, we are not doing it, it is too
19 burdensome. But I said searches haven't even been done, and to
20 be quite honest --

21 THE COURT: Okay. I don't mean to cut you off.

22 MS. CONROY: No problem.

23 THE COURT: But it is now 12:15.

24 So, Mr. Israel, what is your view about ESI in this
25 case? Broadly, not how many custodians or how many search

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1 terms. Is it your opinion you don't want to provide ESI?

2 MR. ISRAEL: No. You have metadata for specific
3 documents that are of interest, that things may have happened
4 with those documents and you need to have the information.
5 Metadata for our entire, everything we have seems to me a
6 little excessive, don't you think?

7 THE COURT: Well, I don't know what that means yet. I
8 don't know who are your custodians, who are you searching and
9 how are you searching their collection? Does Ms. King have
10 e-mail? Did she have e-mail in 2003? Have you searched it?
11 Have you searched it from 2003 to 2017? What did you search it
12 for? I mean, I don't know the answer to any of these questions
13 but those are the sorts of things I need to know before we can
14 kind of manage this issue.

15 MR. ISRAEL: It seems like it is premature. The one
16 thing I would say, though, is in the abstract to tell somebody,
17 which is what I was told we need all of your metadata, it is
18 like a meaningless suggestion. "All of our metadata." What
19 does that mean?

20 MS. CONROY: Your Honor, I am sure you are well aware
21 of this. We are talking -- this is a certain file that if it
22 is extracted by a vendor, it is simply a file that the vendor
23 takes in conjunction with the electronic discovery that's
24 identified. So, this is why I do agree that there is a
25 certain -- to the extent I am being told it is burdensome and

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1 is premature without knowing the volume or any of the steps
2 taken, I don't know how I can be told flat out that I can't get
3 the metadata.

4 MR. ISRAEL: Don't you ask for it for specific things,
5 like I need metadata for this because this is something that
6 may have been altered or something else related to this
7 document? Do you just say you want the metadata for everything
8 you are producing? Isn't that weird?

9 MS. CONROY: If a document is altered --

10 THE COURT: Let's not get bogged down into metadata
11 right now, okay? Let's talk more broadly. Is there
12 electronically stored information from the plaintiffs that you
13 have produced, to date?

14 MR. ISRAEL: Yes.

15 THE COURT: You have produced, for example, e-mails of
16 Ms. King.

17 MR. ISRAEL: We produced them as they have been given
18 to us so the answer is yes, but we haven't gone through her
19 computer in response to discovery demands because she has been
20 away so we haven't had access to it. We will do that. What we
21 have done so far though includes e-mails, things that they've
22 given to us, transferred to us and those have been produced.

23 THE COURT: Okay. Well, that's a good start, but it
24 seems to me you need to figure out what your protocol is going
25 to be as far as besides Ms. King who else, Mr. King, other

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1 relatives. I don't know. It is not for me to say but it seems
2 to me you need to say to Ms. Conroy and Mr. Kelly, this is our
3 plan for ESI on our end, this is what we plan to do. And you
4 need to tell them that and you need to tell them that
5 relatively soon.

6 MR. ISRAEL: You mean in terms of the source of the
7 materials that we are going to be pooling our production from?

8 THE COURT: What I mean is they serve you with
9 document requests. One way for you to determine what you have
10 to produce in response to them is to provide ESI, which you
11 will be collecting from your custodians whoever they may be,
12 right?

13 MR. ISRAEL: Right.

14 THE COURT: And the way you will collect them is based
15 on how you are going to search for them.

16 MR. ISRAEL: Right.

17 THE COURT: And so, you are going to tell Ms. Conroy
18 we are going to search these three custodians with these five
19 search terms.

20 MR. ISRAEL: Okay.

21 THE COURT: And we are going to be able to tell you
22 and produce to you, by this date, what we have in that regard.
23 And then she is going to say, that's fine, but I think there
24 should be one more custodian or three more search terms, or
25 whatever. And then you are going to have a discussion about

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1 it. And hopefully you will resolve it and if you don't, I will
2 hear about it.

3 MR. ISRAEL: And they'll do the same thing.

4 THE COURT: And they'll do the same thing.

5 MS. CONROY: We have, and we have been talking to them
6 about search terms and we talked about meeting and conferring
7 to agree to joint search terms.

8 THE COURT: I'm not going to adjudicate custodians or
9 search terms today because you haven't talked about it and you
10 need to talk about it. Okay?

11 MR. ISRAEL: I understand that.

12 THE COURT: Metadata is the next stage, if you will,
13 after you have done all of that.

14 MS. CONROY: Right.

15 THE COURT: So, it is premature to even used the word
16 today much less try and figure it out but there may well be, in
17 a case like this in which there are allegations of forged
18 documents and fraud and the like, that people will want to get
19 behind certain documents. But, it is premature to know what
20 those are. You are not wrong, Mr. Israel, when you say what
21 you did about are we going to produce metadata for the whole
22 collection. The answer is no --

23 MR. ISRAEL: Right.

24 THE COURT: -- of course not. But before you play a
25 burdensome card or whatever, I would need to know and your

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1 adversary would need to know in advance of my knowing why you
2 are suggesting something is burdensome or not. Okay? And I
3 don't know how to think about it in the abstract and we are not
4 there yet.

5 So you all need to, in the next couple of weeks,
6 really work through the threshold issues of ESI, if you will,
7 and see where it takes you. That's what I would say.

8 MR. ISRAEL: My understanding is much enriched by what
9 you just said, your Honor. I understand much better.
10 Originally I thought we were just being asked for metadata
11 which, as you just mentioned, seems a bit unusual.

12 THE COURT: There will be metadata that is implicated
13 in the case but let's lay the foundation first.

14 MR. ISRAEL: Okay. Okay.

15 THE COURT: Okay?

16 MR. ISRAEL: Okay.

17 THE COURT: Okay.

18 MS. CONROY: That's all, your Honor.

19 THE COURT: Let's come back to that when we need to,
20 which is not today.

21 MR. ISRAEL: We have issues, too. Are we going to --

22 THE COURT: Hold on. I know that.

23 MR. ISRAEL: Okay.

24 THE COURT: We are going to exhaust Ms. Conroy first
25 and we will hear whatever else you have.

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1 MS. CONROY: I agree with you totally, your Honor.

2 THE COURT: Okay. So, you all will air that out and
3 see where it takes you.

4 MS. CONROY: Thank you very much, your Honor.

5 THE COURT: What else do you have, Ms. Conroy? Is
6 that the end?

7 MS. CONROY: I believe that is all.

8 (Counsel conferring)

9 MS. CONROY: I will just put it on the record now so
10 confront the issue, I don't know that we have to speak about
11 it. As part of our, part of our document request, your Honor,
12 we also made a request for inspection of the artwork.

13 THE COURT: Well, it seems to me that what is good for
14 the goose is good for the gander. Aren't you both going to
15 have to engage in inspections along the way?

16 MS. CONROY: I think that's fine, your Honor.

17 THE COURT: Is there an objection to that, Mr. Israel?

18 MS. CONROY: There was no response to it so we are
19 just pointing that out. They didn't actually respond or object
20 in their responses or objections.

21 THE COURT: I see. Don't you want to inspect their
22 art and they inspect your art, so to speak?

23 MR. ISRAEL: Well, we wanted to inspect their art for
24 a long time and they haven't been willing to do it.

25 THE COURT: Okay, but you are going to both do it. I

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1 mean, you both have to do it and you will have to see if you
2 can figure out a protocol. I suspect the lawyers should be
3 involved in that.

4 MS. CONROY: Yes, your Honor.

5 MR. ISRAEL: One question about that, your Honor. How
6 is it relevant to the questions that they are posing, to their
7 complaint? It is not in their complaint. They're talking
8 about transactions that took place that would require us to not
9 have the artwork.

10 THE COURT: Part of the issue in this case, as I
11 understand it and you can correct me if I am wrong, is who has
12 what, how did you get it, when did you get it, etc. Right?

13 MR. ISRAEL: No.

14 MS. CONROY: Yes, your Honor. We would say yes.

15 MR. ISRAEL: No, that's not it.

16 MS. CONROY: And did you rightly take it? Did you
17 wrongfully sell it? Yes, I do think that --

18 THE COURT: There are 98 paintings, right?

19 MR. KELLY: It is more broader than that, your Honor.

20 Our claims encompass art outside of the 98 that was on
21 the appellate inventory that we discussed that is subject to
22 the TRO in the surrogate's court case. We have alleged that
23 artwork that was represented to be in Ms. King's control was
24 illegally sold; it is in our complaint at paragraph 117. We
25 then found since we filed the complaint that more works from

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1 this list that she has represented are in her control have been
2 sold as recently as December 8th of last year.

3 THE COURT: The problem I think with the inventory is
4 going to be that the art is not in one place, it is going to be
5 scattered, some of it is going to be in China. There are going
6 to be logistics related to that. So, as a theoretical matter,
7 I can understand why this would be important. As a practical
8 matter, I don't know how easy it going to be to accomplish.

9 MR. ISRAEL: Your Honor?

10 THE COURT: Hold on one second, Mr. Israel.

11 MS. CONROY: Which we agree with.

12 I think the first step to that is being to able to
13 identify and exchange where this artwork is and then to the
14 extent there are costs or burden involved, I think there is
15 something that the parties can take on for themselves. If, for
16 instance Ms. King says, well, 15 of these paintings are in
17 Shanghai, I can't bring them here easily, it would be cost
18 prohibitive -- I am making stuff up right now, whatever the
19 case may be -- I think that is something for us to consider
20 whether or not we want to go and take the burden of the cost
21 over there as she is making them available for us to inspect
22 and I think vice versa.

23 MR. ISRAEL: Your Honor, may I?

24 THE COURT: Yes.

25 MR. ISRAEL: I have to add some clarity, at least I am

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1 going to try to. This case is not about the entire pool of
2 C.C. Wang paintings.

3 THE COURT: Your case.

4 MR. ISRAEL: Their case isn't either. Their case is
5 not either. I have read their complaint, I know exactly what
6 their complaint says and it is not. What it is about is a
7 discrete set of paintings. They say we stole certain
8 paintings. We say they stole and sold paintings to themselves
9 and sold them overseas for a certain amount of money. There
10 are discrete paintings. Now, some of the paintings that
11 they're claiming that we stole have already been litigated and
12 were subject to a bankruptcy discharge and a settlement in that
13 bankruptcy, no question about it. Then there are paintings
14 that aren't subject to a discharge, aren't time barred and that
15 we are proceeding against and all of those paintings are a
16 discrete number of paintings. To just say, hey, let's check
17 the inventory out is way beyond the scope of what this case is
18 about. It is just to fish around and try to find new theories
19 as to how things may have been taken.

20 They have specific paintings that they're claiming
21 were stolen. We have litigated, there was a discharge, and now
22 we are talking about now let's open up the appellate inventory
23 and see if there is anything else of interest in there that we
24 can try to make a claim upon.

25 It wildly exceeds the scope.

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1 THE COURT: With all due respect, this issue was not
2 presented to me in any correspondence, I'm not going to address
3 it today. If you all want to submit something further to me
4 about it, you can, but there is nothing in front of me about
5 this. This was raised as a little bit of an afterthought and
6 now it has become a big deal. I'm not going to rule on
7 anything related to this today. You all will have to talk
8 about this and if there are ongoing disputes about it, you will
9 tell me.

10 MR. ISRAEL: Okay.

11 MS. CONROY: Okay, your Honor.

12 THE COURT: What else do you have, Mr. Israel?

13 MR. ISRAEL: The first thing, and perhaps the most
14 salient thing in our letter, we identified on the trust
15 document that's been produced for S.K. Wang there are
16 redactions. The redactions are of the assets in the trust
17 which are really the critical thing that we are looking for in
18 the trust. It doesn't even say redacted.

19 THE COURT: We are looking on page 2 of your letter?

20 MR. ISRAEL: Yes, sir.

21 THE COURT: Okay.

22 MR. ISRAEL: And it is just a kind of, you know,
23 unexplained redaction that is there.

24 THE COURT: Okay. Stop. I am going to be cutting
25 people off now. I'm sorry to do that.

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1 Off the record.

2 (Discussion off record)

3 THE COURT: Ms. Conroy, why is this redacted?

4 MS. CONROY: Okay. We met and conferred about this.

5 They asked if we redacted. We said, no, it was produced
6 exactly as it was given to us, it was our understanding it was
7 not redacted. They said can you confirm it wasn't redacted?
8 We said yes we will go back and confirm.

9 So, I'm not sure why there is representation that we
10 didn't say we wouldn't go back and confirm or we wouldn't go
11 back and ask. We confirmed specifically that the law firm,
12 that Kasowitz, did not redact anything without putting a
13 redaction stamp. It was our understanding from our client that
14 that's how the client received it and that we would go back to
15 the client and would go back to see if we can get the originals
16 to confirm.

17 So, we already said we would look into this and double
18 check their concern.

19 THE COURT: And if you can find the original
20 unredacted.

21 MS. CONROY: If it is. We are not conceding it is
22 redacted because we don't know it is redacted. They're
23 claiming it is redacted. No one has told us it is redacted.

24 THE COURT: If you find the unredacted version of this
25 document you will produce it.

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1 MS. CONROY: A hundred percent.

2 THE COURT: And you will be looking for it?

3 MS. CONROY: Yes, your Honor.

4 THE COURT: That's all I can ask.

5 MR. KELLY: But we do not agree to the premise that it
6 was ever redacted. We asked our client, he did not redact it.
7 It is the last page of a formation document for a trust that
8 says here are the assets. It was never filled in by the law
9 firm.

10 THE COURT: Who produced it?

11 MR. KELLY: Andrew Wang gave it to me. I have the
12 copy he gave me, it is not the original copy.

13 THE COURT: Who did he get it from?

14 MR. KELLY: From lawyers. He had it in his
15 possession --

16 THE COURT: So the lawyers redacted it?

17 MR. KELLY: It was never filled in with anything, your
18 Honor.

19 THE COURT: It was never filled in.

20 MR. KELLY: Yes.

21 THE COURT: Okay. If that's the answer, that's the
22 answer.

23 MR. KELLY: We have gone to the client. He is going
24 to look to see if there was any other copies in his possession.
25 He has not found one yet.

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1 THE COURT: All right.

2 So if, Mr. Israel, there is an unredacted version,
3 counsel have represented it will be produced. If there is no
4 unredacted version because it is how Mr. Wang received it from
5 his counsel, they will tell you that and confirm that.

6 MR. ISRAEL: Could we have an order saying they have
7 to produce the original to us?

8 THE COURT: If there is no original -- when you say
9 the original, what do you mean? That the law firm created?

10 MR. ISRAEL: The document that was signed by the
11 defendants. The document that was signed by the defendants.
12 It is very unlikely that it would have a schedule on it that
13 lists assets which is the critical piece of the trust document
14 left blank. Clearly this document has been altered and it has
15 been removed so we just want to see the original to see what
16 the assets are. We are not accusing their firm, we are saying
17 this is what happened. The principal obviously did this.

18 THE COURT: I thought I heard Mr. Kelly say that if
19 there is an original that was unredacted they will produce it.
20 If there is none, they will tell you that. So, it may be what
21 they have represented is. Contrary to what you think, the
22 lawyer never filled this out. I don't know if that's true or
23 not true but that is what he is representing. So, when you say
24 I want the original, the original may look exactly like this.
25 They will give you either that but you don't need the original

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1 if it's that. They'll confirm, as officers of the Court,
2 they're standing up in front of me, a federal judge and
3 representing it. Okay? So, they would be in a whole lot of
4 trouble.

5 MR. ISRAEL: Can we have a deadline for them to do
6 that, your Honor?

7 THE COURT: A deadline?

8 MR. ISRAEL: Yes, meaning that they'll do it by a date
9 certain because this is kind of important to us. They'll do it
10 by, let's say, next week, the end of the week that they'll
11 confirm that there is no original and report to us?

12 MR. KELLY: Your Honor, our client is in route back
13 from China as we speak. He is going to arrive this week. I
14 can assure the Court we can do it by the 31st.

15 THE COURT: Let's say the 31st. That seems to be the
16 magic date in the case.

17 MR. KELLY: I would like to address that there has
18 been an assertion that there is something untoward about it,
19 that this is unusual.

20 THE COURT: With all due respect, I don't think we
21 need to do that. I want to just focus on what is open and what
22 can I resolve today, not making records, if you will. Okay?

23 What is next. So, that's that. What's next?

24 MR. ISRAEL: The other thing is, and we gave you a
25 fairly elaborate explanation of how we know that certain

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1 companies have been omitted from their list of companies that
2 are owned by Andrew Wang and S.K. Wang. We now know that two
3 companies were left off their list of companies that are
4 controlled by them. What we need to have is an accurate list.
5 And I don't know how we get to that point, what the remedy is
6 and what I should ask you for, specifically. All I know is
7 they're not giving us the list of all these companies. Once
8 they said, oh, mea culpa, we left off the company, they added
9 the company, it wasn't the one we were referring to, it was yet
10 another company. So now we know two companies that were left
11 off. What can we do? I am posing this rhetorically so that we
12 actually get an accurate list of the companies that he owns and
13 controls.

14 THE COURT: Ms. Conroy, can you answer Mr. Israel's
15 rhetorical question?

16 MS. CONROY: Yes, your Honor.

17 THE COURT: Even though rhetorical questions don't
18 usually get an answer.

19 MS. CONROY: This is all I can say, your Honor. They
20 raised on the meet and confer this other company. We said we
21 are unaware, do you have something that you want to give us so
22 we can inquire to our client about it. They were like, no,
23 we're not giving you anything about it and then put it in the
24 letter.

25 We are happy to go back and ask the client about it

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1 and ask why and supplement, it was nothing done on purpose and
2 we said that. When we asked, How do you know about it --
3 because we didn't know about it on the meet and confer -- asked
4 do you have something you can give us so we can inquire and go
5 back? They didn't want to give it to us.

6 So, we learned about whatever evidence they had when
7 they submitted the letter to you.

8 THE COURT: Do you have, Mr. Israel, a non-work
9 product document that you can produce that would enable them to
10 go to Mr. Wang to confirm either more information about this
11 company or otherwise?

12 MR. ISRAEL: This was our work product that we waived
13 the protection on when we included it in our letter to you. We
14 were reluctant to do it but we did it with the one company to
15 prove that is exists and it is relevant to what took place
16 here.

17 MS. CONROY: To be clear, I am happy to go back. We
18 are not unwilling, nor were we during or meet and confer, to go
19 back to the client about it.

20 THE COURT: All right. So you are going to go back to
21 him --

22 MS. CONROY: Yes.

23 THE COURT: -- and you will see what says.

24 MS. CONROY: Yes, your Honor.

25 THE COURT: And you will advise Mr. Israel?

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1 MS. CONROY: Yes, your Honor. No problem. Yes.

2 THE COURT: Okay.

3 MR. ISRAEL: That's it, your Honor.

4 THE COURT: That's it. I love those words.

5 Let's talk about a couple of things. As we have
6 discussed previously, I do think, given the nature of
7 everything, this is a case that I want to affirmatively and
8 proactively schedule conferences rather than just wait for you
9 all. So, I was thinking that we would schedule a conference in
10 mid-February about 30 days out or so. Today is the 18th. How
11 about the 22nd of February, does that work?

12 MS. CONROY: That works for us, your Honor.

13 MR. ISRAEL: Works for us, your Honor.

14 THE COURT: Okay, so let's say 10:30 on February 22nd.

15 So, what I encourage you to do is you are going to
16 have disagreements between now and then. Sort of stack them up
17 and we will deal with them all then. If there is something
18 that is, I will call it emergent, you can bring it to my
19 attention before then and we will have a telephone conference
20 if it really is something I think I need to resolve right away.
21 But, be sparing in that, I would say. But assume that we will
22 have a lengthy session on the 22nd as we have today.

23 Okay. So that's that.

24 I also think we should set a date by which all
25 document discovery is produced in this case, that's in both

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1 side's interest. So, what do you all think makes sense working
2 backward from the May 8th deposition deadline? Mid-March?

3 MR. KELLY: Your Honor, I am going to express a
4 concern right now. We just received the first production last
5 night. We haven't received interrogatories, we haven't
6 exchanged preliminary disclosures.

7 THE COURT: Are you doing both of those by the 31st?

8 MR. KELLY: Right. I am saying for the discovery
9 process to play out so that if we find something we are going
10 to have a follow-up question --

11 THE COURT: I am thinking about 45 days beyond that.
12 This is the kind of case if we let it go it's to the detriment
13 of both sides, it seems to me, and we all know, especially in a
14 case like this, frankly, you all have much more information
15 than most litigators have in most cases because of the
16 surrogate's court proceeding and the relationship that case has
17 to both of the lawsuits that are pending in federal court. So,
18 this is not a case where you all don't know a lot of things.
19 You know a lot of things but you still need to know and learn
20 more. It is an imperfect process. We all know that. Whatever
21 date we pick you are not going to literally have every document
22 in hand that you want to have for the depositions you are going
23 to take. You are just not because you never do. It doesn't
24 mean that parties don't have an ongoing duty to supplement.
25 That's what the rules require. So, if we pick March 15 it

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1 doesn't mean on April 12, if some document lo and behold shows
2 up, and if you don't produce if it is responsive, especially if
3 it is a document that you think needs to be produced because it
4 is going to be used by one or the other side in the case, but I
5 do think we should set a hard date because this is a 2014 case,
6 in the first instance, about matters that have gone on for 20
7 years. And so, this case needs to move as quickly and
8 efficiently as possible and that's in everybody's interest.

9 I have to assume that all of those things being equal,
10 when you have a family dispute like this, it wears on people.
11 I know your respective clients obviously have tremendous
12 animosity to each other, that's plain, but it can't be in
13 anyone's interest that this goes on for any longer than it
14 needs to.

15 So, I do think that we need to set a date, mindful of
16 what you just said, Mr. Kelly, and I am sure Mr. Israel has
17 concerns, too, about what is being hidden and all of that and
18 that's the nature of the allegations in the case going both
19 ways, but my job is to manage this and so I want to set a
20 deadline and I was going to propose March 15th.

21 MS. CONROY: I think that's right, your Honor, because
22 I think that leaves enough time, if there are any issues that
23 the parties have with what's been produced to that date, it is
24 sufficient time to bring it to the Court's attention and
25 potentially have remedies before leaving enough time for any

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1 supplemental depositions to occur.

2 MR. ISRAEL: I was going to say the end of the month
3 but I guess it is really not a distinction without a difference
4 so, yes, that's fine.

5 THE COURT: So, March 15th will be the deadline for
6 all document discovery. You said we have already produced and
7 we are going to continue to produce and you have said the same,
8 in sum and substance, but everyone needs to know that's the
9 hard date.

10 MS. CONROY: For clarification, your Honor, if I may?
11 If we are saying March 15th for party production, right,
12 because if there is a production on the 15th and there is a new
13 third-party I didn't know about can we --

14 THE COURT: I suppose that's all right.

15 MS. CONROY: We can set a deadline for third-party.

16 THE COURT: I don't want to have too many satellite
17 issues here.

18 MS. CONROY: Fair enough. We can set third-party
19 discovery for 30 days out for April 15th, that's fine.

20 THE COURT: What are we talking about?

21 MS. CONROY: My only concern is if we are hitting --
22 if party productions -- if discovery is March 15th, the
23 deadline, and I'm getting a late date production from
24 plaintiffs in the beginning of March that all of a sudden is
25 mentioning people I have never heard about before, I have no

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1 ability to subpoena them.

2 THE COURT: Is it likely that's going to happen?

3 MS. CONROY: I don't know.

4 THE COURT: Who are the third-parties?

5 MS. CONROY: I just got the first production of 1,700
6 pages last night.

7 THE COURT: But who are the third-parties you are
8 thinking about? What categories of people are you talking
9 about?

10 MS. CONROY: To be specific, your Honor, and as far as
11 our complaint, right, like you said, this is a back and forth
12 on both sides, neither side trusting each other and believing
13 that they were siphoning off assets. So, to the extent that we
14 have allegations about how Ms. King did that and the people
15 that assist her in that scheme, you know, I don't know all of
16 those, per se, until they've produced documents that are
17 requested.

18 THE COURT: Well, it makes me a little nervous because
19 if there is going to be full blown third-party discovery in
20 earnest that's not going to start until March 15th, you are not
21 going to meet Judge Keenan's May 8th deadline.

22 MS. CONROY: Fair enough. Okay.

23 THE COURT: So, I would say March 15th is the deadline
24 for all document discovery, party and non-party. If there is
25 some exception to be made because there is some late known

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1 third-party that requires some post March 15th subpoena, you
2 can seek relief from the court in that regard.

3 MS. CONROY: So then can we set a deadline -- I
4 understand all fact discovery -- document discovery due March
5 15th; can we say that the parties have to substantially produce
6 all of their documents by the end of February?

7 THE COURT: No. I'm not going to do that.

8 MS. CONROY: All right. Fair enough.

9 THE COURT: I'm not going to do that. In this case I
10 think that's a recipe for disaster, frankly.

11 MS. CONROY: Okay.

12 THE COURT: I understand why you are asking but I am
13 not going to go that way. All right. I think we are all set
14 for today then and I will sign a protective order, as discussed
15 earlier, and we will put an order on the docket with the other
16 dates so that Judge Keenan is aware of them as well.

17 Anything else we need to put on the record?

18 MS. CONROY: No. Thank you for coming in when you
19 were sick.

20 MR. ISRAEL: Thank you, your Honor. Both sides, I am
21 sure, appreciate the attention you are putting into the case
22 and I know it is a lot and we appreciate it.

23 THE COURT: Well, that's my job but I am happy to do
24 it. Let's go off the record for a second. Thank you, Pam.

25 (Discussion off record)

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